

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

J U D G M E N T

Smt. Laxmi Devi & Another Vs. State of Rajasthan & Others

(SB Civil Writ Petition No. 3346/98)

Date of Judgment : 17th July, 2006

Hon'ble Mr. Justice KS Rathore

Mr. HS Khandelwal, for the petitioners.

None for the respondents.

REPORTABLE

The petitioner No.1 applied for seeking appointment on the post of Class-IV servant in lieu of service of his father Late Shri Om Prakash Mathur under the Rajasthan Recruitment of Dependents of Government Servants (Dying while in Service) Rules, 1975. The application of the petitioner was rejected vide order dated 26.5.98 in view of rule 10(3) of the Rules of 1996 as the petitioner was not able to submit her application within 45 days. The present petition is directed against the order dated 26.5.98.

Heard rival submissions of the respective parties and perused the

relevant rules and the judgments rendered by this Court and Hon'ble the Supreme Court. Hon'ble Supreme in the case “Umesh Kumar Nagpal Vs. State of Haryana & Others” reported in 1994(4) SCC 138 has held as under:-

“The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible

for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz; relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the

rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

Unmindful of this legal position, some governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. IN the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State government had made at least one exception and provided compassionate employment

in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B. Tech. Etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment.

We are of the view that the extraordinary situations require extraordinary remedies and it is open to the government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependent of a deceased Class I Officer, should be offered appointment against a Class II or IV post. While we leave it to the government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter

of fact, we would recommend that the government should frame a policy even for such appointments.”

It is obvious from the above observations that the High Court endorses the policy of the State government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over”.

Thus, in view of the ratio decided by Hon'ble the Supreme Court the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment.

Applying the ratio decided by Hon'ble the Supreme Court in the present case, the petitioner applied for employment for compassionate appointment in the year 1998 and that too was not within the prescribed period of 45 days under rule 10(3) of the Rules of 1996.

Ignoring this fact also this writ petition comes up on hearing after lapse of eight years and as per the Hon'ble the Supreme Court mere death of an employee does not entitle his family to compassionate appointment. The material fact must be considered as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death. The compassionate employment cannot be granted after lapse of reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over”.

Here in the instant case, after lapse of eight years the petitioner is not entitled to get the employment under the Rules of 1975.

Consequently, the writ petition fails and is hereby dismissed.

(KS RATHORE), J.